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NOTES OF THE WEEK

Committal for Sentence

Magistrates' courts can commit convicted defendants to quarter sessions for sentence under two different sections of the Magistrates' Courts Act, 1952, *i.e.*, s. 28 (committal with a view to a borstal sentence) and s. 29 (committal for indictable offence tried summarily). In some cases the circumstances would justify committal under either of these sections and the High Court has indicated that in any such case a committal order under s. 29 is to be preferred because it gives quarter sessions a wider discretion to the sentence which they can impose.

Provided that the convicted defendant is not less than 16 but under 21 and the court is satisfied as required by s. 28 (1), *supra*, committal under that section is possible if the conviction is in respect of any offence punishable on summary conviction with imprisonment. Under s. 29 committal can take place only in the case of indictable offences tried summarily by virtue of s. 18 (3) or s. 19 of the Act of 1952. It sometimes happens, therefore, that a defendant is convicted of a number of offences, some of which are within s. 29 and others of which are not. What should the magistrates' court do in such a case if it decides that it is proper to commit for sentence under s. 29 in respect of those convictions to which the section applies? Two courses are open to them. The one is to sentence in respect of the other offences in such way as they think appropriate and the other is to postpone sentence in those cases until quarter sessions have decided what is the appropriate way of dealing with the offender on the charges in respect of which he is committed to them.

In a case reported in the *Bedfordshire Times* of January 16, complaint was made by the defending solicitor in a case in which the latter course had been followed that his client was being "shuttlecocked" between the magistrates' court and quarter sessions. We do not see any real basis for complaint. It was perhaps unfortunate that in that case the major offence, if one may so describe it, was that of aiding and abetting in taking and driving away a car, which was dealt with under s. 18 (1) of the Magistrates' Courts Act, 1952, and was not, therefore, within s. 29. The committal for sentence was in respect of the incidental offence of stealing the petrol consumed on the journey. The learned recorder imposed lighter sentences than he would have done had he been dealing with the whole case as he was not, as he expressed it, in a position to deal with the main offence. In a general way, however, it is probable that the more serious offences will be those dealt with under s. 29 and the magistrates' court may well feel that they prefer to leave it to quarter sessions to impose such sentence as that court considers appropriate on the graver charges and to deal subsequently with the lesser ones in the light of the sentence imposed by quarter sessions. We do not think that, in the absence of any direction by the High Court, it is possible to lay down any hard and fast rule and magistrates' courts must decide in each such case which is the better way to deal with that case.

The same problem can arise to a lesser degree in committals under s. 28, but the offences left to the magistrates' court in such cases, being only finable ones, can normally be dealt with at the time at which the committal to quarter sessions takes place, leaving the enforcement of the payment of any fine to be dealt with later.

The Juvenile and the Juvenile Court

The behaviour of a boy in the juvenile court is no sure indication of his attitude towards his offence or towards the court. He may be sorry for what he has done but too bewildered to say so; he may be truculent because he is near to tears, or he may be glib and assured because he rather fancies himself as the central figure in a drama. The bench will not judge hastily by outward signs but will try by its own contact with the juvenile in court and by reports from those who have seen him under more normal conditions to ascertain what he really thinks about it all. Speaking generally, however, it may be said that the court knows comparatively little about the way in which boys and girls regard the bench, the

proceedings and the decisions of the court.

Considerable light is thrown upon this matter by an article in the *British Journal of Delinquency* for January, 1959, entitled Juvenile Courts: The Juvenile's Point of View, by Dr. Peter D. Scott, who holds, among other appointments, that of visiting psychiatrist to the London county council remand homes. In 1957 boys aged between 12 and 16 in a remand home were asked occasionally to write about "What happened to me in court." They were invited to write just whatever they liked and not to put their names on their papers. It was recognized that boys in custody might in some instances think it politic to write favourably about the court and that some might take the opportunity of showing resentment, but on the whole it looks as though there was a fairly candid expression of opinions, though in some instances well, in others ill-expressed. One outspoken comment was "I shall not hesitate to report some of the happenings to people of authority when I am released."

What the Juvenile Thinks

One fact that emerged clearly from the investigation was that these boys, charged as offenders, regarded themselves as before a criminal court and the order of the court as a sentence. Their idea of justice was retributive. To them an approved school order may appear as a sentence of three years, and always as being put away. At the same time, there is often a recognition that they have done wrong and that the court has done its duty fairly, although one boy wrote "it all depends on what the magistrate is like," and another "if you are lucky you get a good judge you get off with probation, but if you get a bad judge they put you away," or "if the judge is in a good mood . . ."

One boy thought women magistrates were better and more lenient, another that they were liable to get sentimental and give very short sentences, this boy went on "old pensioned gentlemen who doesn't like the clothes you are wearing or long hair give stiff sentences." Another boy wrote "a woman says three years for you as soon as you walk into court."

There was evidently a good deal of confusion about the members of the court and the officials, some boys believing they were being tried by a jury. On the whole, however, there seems to have been a fair appreciation of the object and nature of the proceedings. One boy did take exception to the fact that one magistrate was drawing a horse all the time and appeared to take no notice of the case. Several boys complained of long periods of waiting at the court. Several complained of the large number of people in court, one said this made him scared.

It is significant that only one boy expressed anything approaching shame. A fairly large number complained that they were hardly dealt with, and failed to realize that what looked to them like a long sentence for a trivial offence was not intended as a punishment. Here and there was a better understanding, as shown by the boy who wrote of a magistrate "she spoke to me in a way that told me she was trying to help."

Mr. J. H. Craine

At the end of this month (February), Mr. J. H. Craine retires from the Metropolitan Magistrates' Courts Service, in which he has served as a chief clerk since 1929. He is a native of the Isle of Man, and began his service at the age of 18 in the War Office as a second division clerk, and he returned to that department for a short while after active service, as a territorial with the Queen's Westminster Rifles, in the 1914–18 war. In 1919 he entered the Metropolitan Magistrates' Courts Service as a second clerk and was promoted to be a chief clerk in 1929. He served in that capacity at the West London Court for some 18 years, and then, in 1947, he transferred to the Bow Street Court where he has remained.

Craine was responsible for the feature "Magisterial Law in Practice" from the time of its inception in 1956 to December 30 last, and had been an irregular contributor to the journal in magisterial topics for some years previous to that. Noted for a meticulous attention to detail, a prodigous memory, and outstanding accuracy, he was awarded the O.B.E. in the 1959 New Year's Honours List. We understand it is his intention to retire to the Isle of Man in due course of time, and we would take this opportunity of wishing he and Mrs. Craine a happy and long retirement there, coupled with the hope that they will not remain entirely lost to London.

Prosecution or Caution

If everyone who committed a minor offence against traffic regulations or other offence involving little or no moral guilt, the magistrates' courts would be even more congested with long lists than they are already. So, too, if every small child caught pilfering were to be brought before a juvenile court, those courts could hardly get through their work. It is generally conceded that there must be some measure of discretion allowed to the police and other prosecuting authorities to administer cautions in respect of trifling offences when, so far as is known the offender has not been in that kind of trouble before. There is some difference of opinion about the extent to which cautions should be used, especially in the case of juveniles, but probably none as to the propriety of their use within fairly strict limits.

It was recently suggested on behalf of two companies summoned for offences in connexion with the sale of food, that as the companies had traded in the neighbourhood for long years without complaint, a caution might have been given instead of their being summoned. So far as appears from a newspaper report, the bench made no comment on this point, and fines were imposed. It was no doubt felt that though the defence was perfectly entitled to make its submission it must be left to the prosecuting authority to decide when to caution and when to apply for a summons. That authority may consider the offence too serious to be dealt with by caution, even when the defendant has the highest reputation, or it may fear to lay itself open to a suggestion of favouritism if it should become known that no summons was issued although an offence was committed. Further, there is usually no publicity about a caution, and it may be desired to call attention to the fact that certain requirements of the law must be observed which are not sufficiently realized.

That cautions are given in respect of some less serious offences against such statutes as the Food and Drugs Act and the Shops Act is clear from references to this procedure in many annual reports of inspectors of weights and measures, but when to adopt this course must often be a difficult decision to make, more difficult no doubt than when the police are dealing with offences in respect of which the public is aware that a caution is by no means exceptional.

Bulletins For Justices

Taking over the clerkship to newly-combined petty sessions divisions gives a clerk to justices opportunities and creates

some problems. Mr. F. Nuttall, clerk to the divisions of Hailsham, Uckfield and East Grinstead, has sent us a copy of the first issue of a periodical memorandum with which he intends to furnish his justices. In it he reports that the amalgamation of three areas appears to be working smoothly. In particular he acknowledges co-operation from the police. As he says, it is inevitable that on changing courts, a new clerk is going to have one or two new ideas if not criticisms, and he is grateful for the readiness of all concerned to discuss and act on any points which he has raised, one of which he instances.

Mr. Nuttall calls attention to some recent legislation, including the Maintenance Orders Act, 1958, and the First Offenders Act, 1958. The former he describes as one of the most complicated pieces of legislation in recent times, but he does not leave the matter there as he goes on to give some explanation of its provisions and calls attention to the full explanation contained in the Home Office circular.

There is the now familiar suggestion that, subject to certain safeguards, magistrates' courts should be given power to deal summarily with charges of house-breaking. It is pointed out that many of these cases are dealt with by probation or other methods within the power of the magistrates' courts and that one suitable safeguard would be for magistrates to have power to commit for sentence in these cases even where there were no previous convictions.

We have no doubt that justices appreciate such periodical bulletins from the clerk, and that the considerable time and trouble involved for him are well justified.

A Noise That Annoys

The use of obscene language in a street so as to cause annoyance is an offence under s. 54 of the Metropolitan Police Act, 1839, or s. 28 of the Town Police Clauses Act, 1847. It may also be an offence against some byelaws where those Acts do not apply.

From the report of *Nicholson* v. *Glasspool, The Times,* February 5, it appears that the appellant had been convicted by justices for an offence against a byelaw but whether the byelaw dealt specifically with the use of obscene language or with annoyance by noise is not quite clear. A constable who gave evidence of hearing the appellant using obscene language in a crowded street said that he was very annoyed, but there was no other direct evidence of annoyance.

In delivering judgment, dismissing the appeal, the Lord Chief Justice said that reference had been made to *Raymond* v. *Cook* (1959) 123 J.P. 35; [1958] 3 All E.R. 407, in which it was held that an instrument did not cease to be noisy because it was musical, and that it was unnecessary, where the justices were satisfied that the instrument was likely to cause annoyance, that there should be any evidence whether one or more people were in fact annoyed by it. Lord Parker said it was contended there was a difference between language and other noises, but he saw absolutely no difference between the two. The language was not used in a whisper, and it was calculated to annoy. The magistrates were entitled to infer annoyance.

This decision puts the law on a satisfactory basis. It is commonsense that some people will be annoyed when obscene language is heard in a busy street. Even men who are not always careful about the language they use among themselves are likely to be annoyed if their womenfolk are compelled to hear obscene language, and certainly respectable women will be affronted. It therefore seems quite reasonable to assume that annoyance has been caused even if nobody actually testifies to it. In *Nicholson* v. *Glasspool, supra,* the constable did, on being recalled, say that he was annoyed.

An "Assault" on a Scooter

It is very irritating at times for pedestrians waiting at a zebra crossing for an opportunity to use the crossing to see an apparently unending line of traffic flowing in a stream which gives the pedestrian no chance to step on to the crossing and so claim his right to precedence. But irritation must be kept under control, as one such pedestrian found to his cost when he was fined a total of £12 and ordered to pay £14 compensation for damage caused by him to a motor scooter. According to the report in *The Yorkshire Post* of January 30, the pedestrian kicked a passing motor scooter and so found himself charged with causing wilful damage to the scooter and with assaulting the rider, thereby occasioning him actual bodily harm. According to the report the defendant stated that he had been waiting for three minutes to cross the road and "the scooter went in front of me and nearly hit me. I kicked out instinctively. It happened on the spur of the moment."

In calling attention to this case we would add that there is a moral obligation on motorists to be reasonable at busy times and to slow up and stop when it is obvious that pedestrians are not getting a fair chance to use the crossing. In doing so they must take care to give to following drivers adequate warning of their intention for if there is no pedestrian on the crossing a driver is going beyond the requirement of the regulations in stopping; but in the same way that pedestrians should not step suddenly on to a crossing without giving a motorist a fair chance to stop so a motorist should not drive so as to prevent a pedestrian from having a fair chance to use the crossing. "Live and let live" is the motto to bear in mind.

Postal Voting by Old People

The Bolton county borough council asked the Association of Municipal Corporations to take up with the Home Office the question of amending the Representation of the People Act, 1949, so as to provide that all electors of 65 years or over might claim to be treated as absent voters at parliamentary and local government elections and allowed to vote by post. Before reaching a final decision the council of the association sought information from 86 member corporations and the replies were very interesting. In very few cases could accurate information be given as to the number of persons over 65 years of age. The figures supplied, which were mainly estimates, ranged between eight *per cent.* and 21 *per cent.* of the electorate. A number of replies referred to the percentages given in the Registrar-General's 1951 census; these varied from about 12 *per cent.* to about 15 *per cent.* The report of the Ministry of Health for 1957 estimated that at mid-1957 the number of persons over 65 years of age represented 11·7 *per cent.* of the population which would be equivalent to between 16 and 17 *per cent.* of the electorate.

The proportion of old people who make use of the present machinery to enable them to vote as absent voters is in most cases not known; it is said to be frequently difficult for authorities to ascertain which of the registered absent voters are in fact old people. A number of the authorities referred to by the association gave an approximate estimate of two *per cent.* or three *per cent.* The association had no specific evidence that any defect in the present machinery is responsible for preventing persons over 65 from voting. But form A

which goes to every household in connexion with the compilation of the register of electors contains a note to the effect that anyone who thinks he may be entitled to vote by post, because of physical disability or because of periodical absences, should apply to the registration officer for a form of application to do so.

The council of the association formed the view (as reported in their *Gazette*) that in the best interests of local authorities and of electors it is essential for postal voting to be kept to a minimum and they considered that amending legislation had not been shown to be necessary by the evidence available. We are glad to note this decision from quite a different point of view. Those who have reached pensionable age do not wish to be treated as if they were in a category apart from the general community although naturally when they have special needs these should be met.

Police Costs

The eighth annual return of Police Force Statistics has been published recently by the County Treasurers' Society and the Institute of Municipal Treasurers and Accountants. In addition to detailed analyses of the cost of each police force in England and Wales most interesting information is given about authorized establishments, actual strengths and population per officer. These were the sort of figures which, placed before the Select Committee on Estimates, led that body to the view that disparities between the authorized establishments of various forces in relation to population could not be wholly accounted for by local conditions, and that there was need for a more regular and uniform system of reviewing establishments, possibly including a quinquennial revision by H.M. inspectors.

The Home Secretary in a circular dated October 7, 1958, addressed to police authorities referred to his observations to the committee, which included the point that the primary responsibility for fixing the establishment rests with the police authority who pay half of the cost (less any equalization grant receivable); asked authorities to consider all factors, including mechanization and civilian employment, before asking for increased establishments; and mentioned that he is still considering the recommendations about establishment reviews.

The return shows an average of 647 persons per officer on authorized strength. Policing is relatively more expensive in the built-up cities and boroughs than in the counties: in the former there is one policeman to every 532 citizens whereas in the counties the figure is 721. There are wide variations within these averages in both classes of authority.

Average expenditure per police officer was £1,226, a small increase over the previous year. The 1958–59 return will record a further rise because of the five *per cent.* addition to police pay awarded with effect from April, 1958.

Average cost per 1,000 population was £1,751. In other words the whole services and duties of the police are rendered at a cost to the average family of 1*s.* 8*d.* a week.

The return also reveals considerable variations in the employment of civilian staff. It may be that reductions of civilian establishments will be possible in some cases if the advice of the Home Secretary set out in the circular we have previously mentioned is followed. The recommendation was that all police authorities who have not already arranged for treasurers to take over the preparation of the police pay roll and similar work should give immediate consideration to the transfer of these duties.

The cities and boroughs do not have to provide the houses which a county authority must build as a necessity of efficient administration, a borough policeman most often being under no necessity to remove from his house on a change of duty or on promotion. County building costs are therefore heavier: the cities and boroughs, however. pay out more in rent allowances.

RESORT TO OTHER INFORMATION

By F. G. HAILS, *Solicitor, Clerk to the Dartford Justices*

It was a defect of the Probation of Offenders Act, 1907, that if a person placed on probation failed to observe the terms of his recognizance it was necessary to haul him back before the court which made the order to deal with his fresh offence, or with his breach of the terms of the order. The Criminal Justice Act, 1948, part I, recast the legal basis of probation, and also provided machinery to bring a probationer who misbehaved himself to book. The Act is defective in that it makes no provision as to who is to set the machinery in motion, and so what is anybody's business becomes nobody's business, with the result that many a probationer who commits a further offence during the currency of his order is not dealt with for this most serious fault.

If a probationer fails to comply with a condition of his order the probation officer is the first to know about it, to try to make his charge see where his fault lies, and, if persuasion fails, to bring him before the proper court for a breach of the requirement, pursuant to s. 6 of the 1948 Act. His duty to report to the supervizing court is laid down in r. 55 (4) of the Probation Rules. On the other hand, where a further offence has been committed the probation officer is faced with a *fait acomplit*, and may think that as the probationer has been dealt with for the fresh offence, no further action on his part is necessary, because the court which dealt with the fresh offence took no action under s. 8 (7). In consequence there has been unevenness of treatment, and some concern has been caused. Recently, on the representation of the probation officers acting for the division, the Dartford Probation Case Committee considered the situation, and representations were made to the Home Secretary for an expression of opinion as to who was the proper person to institute proceedings against a probationer in the circumstances we have mentioned.

In due course a reply was received, and we have the permission of the Home Office to say that it is its view that, although the Criminal Justice Act, 1948, s. 8 (1) does not specify who shall initiate proceedings thereunder, it is its view that the police should do so after taking into account the view of the probation officer. This opinion has been communicated to chief constables.

It is to be hoped that there will now be some uniformity of procedure, for no doubt probation officers will follow a consistent policy, evolved perhaps after advice from their case committees in accordance with the Probation Rules, 1949, r. 39. Undoubtedly it is desirable in most cases that some action be taken, for the probationer is told, when his

order is made, that if he commits another offence during his currency he is liable to be sentenced for the original offence, and if nothing is done undoubtedly he will form the opinion that probation is a mere formality. There may be cases where it is desirable to do nothing: one which springs to the mind is where for a fresh offence the probationer is sent to a detention centre and, there being no compulsory after-care provisions, it is thought advisable to leave the order in force so that on his release he may have the guidance of the probation officer, but even so we think it better to deal expressly with the offender under his order. After all, he then knows that probation is no threat, even if the court in its wisdom decides to make a fresh order, as undoubtedly it may do: *R.* v. *Havant JJ., ex parte Jacobs* (1957) 121 J.P. 197; [1957] 1 All E.R. 479. It should be borne in mind that the original offence should never be taken into consideration, but made the subject of a separate finding: *R.* v. *Webb* (1953) 117 J.P. 319; [1953] 1 All E.R. 1156, and that in a proper case a nominal sentence may be imposed: *R.* v. *Fry* (1955) 119 J.P. 75; [1955] 1 All E.R. 21.

WHY DOES PROBATION WORK?
RESULTS OF A CYPRUS INVESTIGATION

By W. CLIFFORD, *formerly Director of Social Development, Cyprus*

Probation is undoubtedly effective in the sense that a majority of probationers do not reappear before the courts. United States and United Kingdom figures show that we can predict with a degree of confidence that about 20 *per cent.* of all persons placed on probation will avoid reconviction during probation, a success rate which falls to about 50 *per cent.* or less if a few years after probation are taken into account. But how is this result achieved—and does it mean success in a reformative sense or merely an ability to avoid future detection?

The sad events in Cyprus over the past few years have provided a rare opportunity to test the probation system and to compare its effectiveness in normal and abnormal conditions. The compactness of an island population of a half a million people has also made it possible to examine the criterion of reconvictions as a measure of rehabilitation.

A probation system very similar to that obtaining in the United Kingdom was introduced into Cyprus in 1946, the first orders being made in 1947. In practice, however, there was one important difference for in Cyprus the probation work is but one part of the general welfare work of the officers of the Social Development Department. These officers, in their respective districts, do child care and relief work as well as probation and indeed the Social Development Department is responsible for all the various kinds of social case-work.

In 1958, the Director of Social Development conducted a study of the first 10 years of probation in the island. No more than an outline of this work can be given here but the investigation was in four parts:

1. The first stage consisted of an analysis by age, sex, community and offence of all persons placed on probation between 1947 and 1957 and a survey of the results during supervision (according to reconvictions). This showed that no less than 80·25 *per cent.* of all persons placed on probation did not offend again whilst under supervision, *i.e.*, did not appear again before a court.

2. All orders made in 1952 were selected for a follow up extending to 1957, *i.e.*, both during and after the orders were in force. This still showed 64 *per cent.* of the probationers successful in avoiding court appearances even for minor offences like traffic regulations or curfew infringements. Discounting such minor offences the success rate went up to 75·5 *per cent.*

These figures are not remarkable in comparison with probation results in other countries—until one takes into consideration the abnormal conditions that have obtained in Cyprus since 1954. Island-wide strikes, closed schools, demonstrations and riots, public resistance to authority and diminishing social control both in the home and outside, all have meant that probationers could have been involved in a variety of illegal political adventures regarded as heroic by their community. If it be argued that the police might not have been able to maintain their traditional vigilance in relation to ordinary crime there is still the fact that extended traffic and emergency regulations of all kinds hemmed in even the normally law-abiding citizen with laws that made it easier for him to appear before the courts if only for technical offences. Yet probationers did not offend.

3. The third stage of the inquiry was directed towards reconvictions as a measure of reform. Could it be that probationers were not really behaving differently but were merely being skilful in evading detection? All cases placed on probation in three of the island's six districts during 1952 were followed up, not only statistically but by personal investigation. Probation officers visited them at home. An assessment of their rehabilitation was made by an experienced social worker without reference to their criminal records after probation. This independent inquiry substantially confirmed that the criminal record (or the lack of it) gave a true picture of social rehabilitation.

4. Then followed the fourth, and in many ways the most important part of the assessment. Why had these results been achieved? Was it because of the work done by the probation officer? A panel of three social workers went through 181 records abstracting a series of common and apparently significant circumstances in which it might be possible to measure change. These included such items as frequency of domestic change, relationship with parents, work habits, etc. Sixteen items were selected and the position at the time of the order compared with the position at the expiration of the order. These were scored on a scale ranging from plus two to minus two, the plus signs indicating a satisfactory condition and the minus signs an unsatisfactory condition. Differences in the circumstances at the beginning and end of probation were noted and in each case these differences in the 16 items were added together to show the extent of an improvement or deterioration during supervision. Scores were then totalled. Anything between plus five and minus five was taken to indicate doubt. A score of plus five or above meant a satisfactory degree of change during probation and a score of minus five or below indicated an unsatisfactory condition. This is not the place to consider the validity of the method but it was interesting that there was a 50 *per cent.* correspondence between these figures

indicating improvement or deterioration during probation with the results shown by reconvictions and with the results already obtained by an independent investigation of rehabilitation.

It would appear from all this that the changes effected (or the work done by the probation officer) during the period of supervision is the really important factor in the success of the probation system. Cyprus authorities were not satisfied to accept this conclusion, however, without an examination of what supervision had really meant during these difficult years.

The Social Development Department was formed in 1952 and the training of officers for probation work was a steady process extending over a number of years. At the time of this inquiry there was 15 *per cent.* of the staff with United Kingdom university qualifications. All the others had been given in-service training but the department had grown so rapidly that this training could not be as complete or as organized as might have been desired. In the period being considered then the standard of training of probation officers was by no means uniform—yet a careful study of the individual officers' results showed little difference in their ratio of success or failure with their probationers. Next, in this rapid growth over a short period, the department had been obliged to deal with a number of emergencies even before the present political crisis. The earthquake in Paphos in 1953, when the department had to take responsibility for the relief work for 30,000 people meant a disruption of normal case-work and many officers were away from their cases for as long as three months. A study of the results of probation over this period when the personal influence of officers was almost nil by the very fact that they were not there, yielded the extraordinary result that probation remained no less effective. There were, of course, some cases of a probationer going astray because he did not have the guidance of a probation officer, but the general result, *i.e.*, statistical effect of probation, did not show any marked change. Finally, the frequent changes caused by promotions, transfers and other movements within the service as it grew, meant that there were far too many changes of probation officer during the supervision of any given probationer. In one case as many as six officers had supervized at different times within the two years. These changes, unavoidable as they were, inevitably reduced the effectiveness of the relationship between the probation officer and the client. Yet the statistical effect was not marked.

If then, all these are taken into account, *i.e.*, the unevenness of training, the absence of officers on special duties over long periods, the frequent changing of officers responsible for supervision, the conclusion seems inescapable that, in Cyprus anyway, probation was successful in spite of all these difficulties. It raises the more serious question of how far probation depends on these traditional relationships to which we have always attributed its success.

Finally, the reformative value of probation seems to be maintained not only in conditions of social normality but also in periods of abnormality. The adjustment of the probationer to normal behaviour is one thing but when he succeeds in adjusting to behaviour which keeps him out of the courts during a period when most of his contemporaries are thronging the courts then the result is very strange indeed.

This Cyprus experience suggests that many of our assumptions as to the reasons for the effectiveness of a probation system need more critical examination.

G.Q.S. ARCHIVES

By ERNEST W. PETTIFER, M.A.

When county councils were first formed following the passing of the Local Government Act of 1888, they relieved the courts of quarter sessions of a vast amount of civil administration which had become too great a burden for the justices to bear. Many justices, however, brought their experience into the service of the new councils by becoming county councillors. In the majority of the counties, too, the clerks of the peace took over, in addition to their former duties, the clerkships to the new councils. The old records of quarter sessions would remain, therefore, in the hands of the same persons, and the question of the books and documents would not arise at that time.

It would seem, however, from the recurrent publication of quarter sessions archives by the county councils that most of the archives must have come, as the years have passed, into the hands of the county councils, who with funds available, and, in some counties, having their own muniment rooms and staffs of archivists, are placing before the historian and the student the history of the justices of the peace in the five centuries from their commission in 1360 until they ceased to be administrators of the civil law in 1888.

Some county councils are publishing the archives which have been handed down to them in volumes designed to bring into the public view, period after period, literal transcriptions of their historical documents. Others are issuing indexes of the whole of their documents as soon as possible. Each method has its own value.

The latest contributors to the latter class are the Gloucestershire county council, by the hands of Mr. Irvine E. Gray, M.B.E., M.A., F.S.A., the county records officer, and Mr. A. T. Gaydon, B.A., the senior assistant archivist. The small and unassuming volume just published* contains an astonishing amount of information concerning the county archives. Here are to be found the results of the obviously expert examination of thousands of bundles, books and papers, all under bold headings and sub-headings, the years to which they relate, and the actual number of documents collected under each heading.

But this enumeration of the contents of the muniments room at the county hall is only the least of the three points which the reader will note. Next in importance are the valuable notes describing the documents. Opening the book at random we see the heading " Court Houses." Amongst eleven documents are two sets of different types. The first are applications from acting justices for the provision of fit and proper places for holding petty sessions (1849-1864). The second type include an agreement with the clerk of the peace of Worcestershire for the use of Chipping Campden police station as a petty sessional court house for Blockley and Cutsdean (then in Worcestershire).

On the opposite page, under " Militia establishments," there are mentioned three documents of 1855. These are awards by a

* Gloucestershire Quarter Sessions Archives, 1660-1689, and other Official Records. Compiled for the County Records Committee by I. E. Gray and A. T. Gaydon, The Records Office, County Hall, Gloucester. Price 7*s.* post free.

committee consisting of two county justices and two justices of Gloucester city, Tewkesbury and Bristol respectively as to the proportions payable by each authority for the provision and maintenance of militia storehouses. These are of little significance until it is recalled that the Crimean War was then in progress, and that these were new stores for military equipment for the war.

There are documents relating to the setting-up of a separate police force for the county in 1856, showing how strong was the opposition to a county police force, and there are others referring to the opening of Sheepscombe House as a reformatory under the Habitual Drunkards Act of 1879, an Act which involved many counties in considerable expense, in the provision of institutions, and which achieved nothing in the way of reforming drunkards. Fifty-one sheets of plans of the county gaol and the Horsley, Littledean and Northleach houses of correction must be of considerable value to those interested in the penal methods of the 18th century, and there is interesting data as to the Judges' lodgings in Gloucester. A remarkable total of 621 files of quarter sessions documents, briefly summarized by the editors, show how wide was the jurisdiction of quarter sessions from 1728 until the creation of the county councils in 1888.

But the third and most important and valuable feature of the Index is the series of notes prepared by the editors which shortly, but effectively, outline the history of many of the subjects. Brief but exact notes on such matters as the justices and their history, the " examinations " of offenders by justices in earlier days, types of process used by justices, the powers of justices with regard to bridges, the relations between coroners and justices through the centuries, and so on—all these, and many other subjects, are given their historical background.

More light is thrown upon the transportation system under the heading " Transportation Bonds." From the notes we learn that " the contractors bound themselves to transport the convicts, to obtain certificates of landing them from the governor or the chief customs officer of the colony, and not to allow the convicts to return before the end of their sentences." A brief sketch of the history of transportation is followed by the note, " Contractors were employed for the transportation, receiving a bounty, usually £5 per head, from the justices."

There is much valuable information on matters of county history, as for instance, the places of meeting of the justices. There are records of early sessions of the peace at Cheltenham in the 15th and early 16th centuries; Stow-on-the-Wold was a sessions town in the early 16th century; the city of Gloucester not only had its own sessions but claimed jurisdiction over neighbouring hundreds until 1622. Several other towns—Cirencester, Tetbury, Painswick, Wotton-under-Edge—were amongst the meeting-places of quarter sessions. The earliest clerk of the peace was in office by the middle of the reign of Edward I. William James, we learn from the Introduction, was the first clerk of the peace to establish a permanent home for the county archives. The old county hall (the Booth Hall) in Westgate Street, Gloucester, survived until the new county hall was built 1713-20.

On the much-discussed question as to when justices first began to sit in petty sessions, the editors claim that there is evidence as to petty sessional courts in the county in the early 17th century, and, they state, " by 1672 petty sessions were a well-established institution." Positive and well-informed testimony of this nature is of real value to all who are seeking to know more of that intensely interesting figure, the justice of the peace of the past.

In the early years of this century the West Riding Justices in Yorkshire had their dining clubs but, away in Gloucestershire, the justices had had their dining clubs for a century and a half, a fact duly attested by five bundles of vouchers, wine accounts and other documents. From these papers it has been found that the dinners were held alternately at the King's Head and Bell Hotels, and, after 1856, at the Judges' lodgings.

Here, then, in this compact and inexpensive book, is the permanent record of many long hours of patient and skilful research contributed by the two editors. Few of our readers will ever have the opportunity of inspecting the documents themselves, but an admirable view of their varied contents is given in this Index. Mr. R. C. Hutton, the chairman of Gloucestershire quarter sessions in his foreword, puts concisely what, to most of us, is the chief reason for the publications of such volumes as the Gloucestershire Index (which, by the way, is itself well-indexed): " For centuries the unpaid magistracy of England conducted the administration and local government of the counties. It is this fact that makes the delving into quarter sessions archives such a pleasurable and rewarding occupation, whether one is a lawyer looking for evidence of an ancient highway or a record of title, a historian or an antiquarian."

THE VAN IN THE DRIVE

By way of pendant to what we have said about ss. 23 and 24 of the Town and Country Planning Act, 1947, we may mention a case of *Eastbourne Corporation* v. *Anon*, heard in August before the Eastbourne magistrates and quarter sessions for East Sussex. This arose under s. 24 (3) of the Act of 1947 and, since the defendant pleaded guilty after a point of law raised on his behalf had been decided against him, the case did not go beyond quarter sessions, who upheld the magistrates on the point of law; the decision will therefore not appear in the ordinary law reports, but a full account of it is given (by courtesy of the town clerk) at p. 738 of the October issue of the *Journal of Planning Law*. The contention that what the defendant had done did not constitute development would not have been open to him as a ground for appeal to the magistrates under s. 23 (4); this is the link with the major *Eastbourne* case which we have discussed at length, and meant that he could so contend at the stage of prosecution. To us an especially interesting point is that the case arose from the defendant's placing in his carriage drive a trade van which he used for business. More than once we have spoken of this practice; we gave an opinion upon it at 115 J.P.N. 147, referring back to 113 J.P.N. 186 and 114 J.P.N. 173. At 115 J.P.N. 219 there was a decision by the Minister, in line with our opinion, that (so far as public law is concerned, leaving aside estate covenants) there is no difference between one vehicle and another, and that objections often made by neighbours sprang from prejudice ; a trade van is considered to lower the character of a neighbourhood where a private car would not. We have at the same time conceded that, if a trader regularly brought his van to the drive of his private house for business purposes, there might sometimes be a change of use amounting to development within the meaning of the Act of 1947. This must we think, be a question of fact. If the tradesman drives home in his van after he has shut his business premises, and drives out again in the morning as any other householder might do, there is no change of use of the carriage drive, even though the van is full of goods which will be delivered to customers on a morning round. What was done in the *Eastbourne* case, however, went beyond this. The defendant

had been using his cellar and the garage of his house as a grocery warehouse, which was clearly a change of use from private residence, and it looked as if he kept the van standing in the drive because the garage had been turned into a warehouse. Separate enforcement notices were served, in respect of the change of use of the house and garage and the change of use of the carriage drive. It is not altogether clear to an outside observer why this course was taken; the defendant's whole proceedings were one. Perhaps the reason was that the planning authority wished to secure for future quotation a decision of the debateable point about the carriage drive, whereas the point about the house and garage was indisputable. The defendant pleaded guilty as regards the house and garage, but argued the point about the carriage drive. On this the solicitor representing the planning authority quoted the decision by the Minister in 1951, already mentioned, and another. Each turned on its own facts, but on the facts at Eastbourne the magistrates found the case to be one of development without permission. At quarter sessions the defendant sought to argue again the point of law as well as appealing against the sentence, but having pleaded guilty in the magistrates' court was not allowed to do so: the fine imposed for the offence in relation to the carriage drive was reduced, but the decision stands. One last thought; may not it be wise for a planning authority to grant permission in such cases where the occupier of premises with a carriage drive admits that there is a change of use, and to give him the benefit of the doubt, by not serving an enforcement notice, where he does not apply for permission to change the use of the carriage drive and there is no change of use of the house to which the drive belongs? The van standing in the drive may offend the nice feelings of uncommercial neighbours, but at least it will not be forming an obstruction of the highway.

COUNCIL HOUSES—TENANTS NOT LICENSEES

By WILLIAM A. SAXTON, *Clerk of the Council, Brixham Urban District*

The contributed article at 122 J.P.N. 481 ingeniously argues the proposition that what are commonly known as council house tenants are in truth licensees. Such a revolutionary idea deserves to be fully dealt with, and if your readers are to act as jury the case against the proposition should be dealt with as fully as the case for it.

It can be admitted that the proposition, whether true or false, brings out the attractiveness of making the tenants licensees, always supposing a way can be found of doing this: merely calling them licensees will not help. One advantage to the local authority of a licence is avoidance of the need to give a whole month's notice.

The idea of awakening the dead power to make byelaws, instead of putting conditions in a tenancy agreement or on the licence, is also attractive. Even if it has never been used it has been re-enacted as late as 1957, and there can be no doubt as to the power to use it. The advantages might be great. First stamp duty might be saved (or the fear of being caught out in not paying it avoided) because no document need be given to the tenant to evidence his tenancy (and require stamping), and yet the task of reading over all the conditions to him in the presence of a witness can be avoided. No difficulty arises over the possible absence of this witness at the time of the court case for possession (always a possibility, even if not one to worry about unduly). No difficulty arises over the tenant's losing his agreement and not knowing his liabilities. Copies of the byelaws can be posted up and made available at the town hall. Indeed they can be sold there, so that the administration costs can be reduced.

Above all, the enforcement of these conditions is made very much easier if they are byelaws, because it is often difficult for a committee to bring themselves to evict a tenant for breach of a condition and, if they do, it makes unpleasant national news: *videlicet* the cases of eviction for non-cultivation of gardens. Under prosecutions the punishment can fit the crime and there need be no hesitation about prompt enforcement, but the power to sue under a simple covenant to pay the cost of making good damage is lost.

The only other danger is the possibility of an awkward bench which will give only nominal fines or even dismissals for no good reason. As one should not malign our magistracy, perhaps the last sentence should end "for no reason adequate in the eyes of the local authority." We all know the magistrate, county court or High Court Judge, who (properly no doubt) places emphasis on his undoubted duty to protect the individual citizen's liberties. This possibility need not weigh unduly: the occasional *contretemps* in these directions can be overcome—if the authority deem it necessary—by resorting to eviction. It can be no worse as a second line than as first line weapon.

But that is all off the main theme, which is that council house occupants, by and large, are tenants and not licensees. The fallacy in the original proposition that they are licensees probably lies in the failure to distinguish between a lease and a tenancy.

The proponent argues that there is no possibility of a lease, and therefore no possibility of a tenancy, because Ministerial consent is necessary but is never obtained. But one could argue that the Minister's consent under s. 104 (2) of the Housing Act, 1957—of the kind to be given generally to all local authorities—is *not* necessarily or even probably the kind that is given in response to "an application" (quoting from the case for the original proposition). It may well have been given expressly: the longer one spends in local government the more one realizes that there is much that few people know about. In any event there can be no objection to arguing that it can be implied that it was given. There are precedents.

To revert to lease *versus* tenancy. It may be said that the distinction is not legal at all but only "colloquial," so that it must now be proved that the colloquial distinction has received legal sanction or blessing. This should not be difficult. To start off gently it must be pointed out that it is the usage of the legal profession, and not merely lay usage, to make the distinction. If it is said that a tenancy agreement presupposes a lease that is agreed to be granted (even though in a weekly letting it never is), we can argue that the law has acknowledged that a weekly "agreement" is complete on its own. We do speak of a lessee for a term of years as a tenant but never the reverse: a weekly tenant is never called a lessee.

For instance, statute law, such as the Aquisition of Land (Authorization Procedure) Act, 1946, makes a distinction between "tenants" for a month or a less period than a month and lessees.

Now, the protagonist for the licence proposition has argued from ss. 104 and 111 of the Housing Act, 1957. Section 104 has a marginal heading, which was not quoted. It is:—"power of

disposing of houses provided under part I." The italics are not (of course) in the original but they help to show the contrast with the heading of the group of sections containing s. 111:—" Management, etc., of local authority's houses."

A local authority may require to dispose of its houses because the demand has fallen, or because the demand has come to be for owning and not renting houses, or because some property or housing association wishes to have them and the local authority has agreed. Or it may have built the houses for sale in the beginning. The powers of part V of the Act admit of that and many authorities do it. One alternative to a sale in such cases is a long lease. It preserves to the authority some control over the tone of the area, and ensures that in the end it will again get the land for comprehensive redevelopment without the need for repurchasing its own land. Such powers of leasing obviously ought to have the preliminary sanction of the Minister so long as such sanction is required for a sale, or else authorities would use the very long lease (*e.g.*, 999 years) as a device to avoid the need for the Minister's sanction. This puts the need for the Minister's sanction exactly on a par with the need to obtain it for leasing general land, laid down in the Local Government Act, 1933.

Take s. 111 then, and allow that *Shelley* v. *London County Council* (1949) 113 J.P. 1; [1948] 2 All E.R. 898 was argued on the question of management and not whether or not there was a power to terminate a tenancy under the power to " manage "; the corollary is that under " manage " also was, and is, a power to grant a tenancy.

Next, why is a power to make byelaws an anomaly between a landlord and tenant? It is a useful additional power, for the reasons outlined above. Indeed it is less anomalous in respect of a tenancy than a licence, because a licence can be conditional, whereas a tenancy must have restrictions voluntarily undertaken by the tenant in the form of covenants.

Use is made, in the case for licences, of the phrase in s. 1 of the Small Tenements Recovery Act, 1838, " term or interest of the tenant." If the distinction had been justified one might have expected the phrase to be " term or interest of the tenant or licensee." Incidentally, at the time of the passing of the Act of 1838, under what Act was public housing for the working, or indeed any, classes, being provided whether under a licence or a tenancy? No! Everyone was a landlord in those days and not a licensor, and while there were some philanthropic trusts the public authorities restricted themselves to controlling other people. In any event " interest " refers to the interest of a periodic tenant, who does not have a " term certain."

Finally, it must surely be argued that the true inference to be drawn from the existance of a specific statutory power to enter the council house in s. 111 (2) (apart from the fact that it is at " all times " and not the usual lease-power, at " all reasonable hours ") is that the relationship is indeed a tenancy and *not* a licence. A licensee essentially is one who does not have exclusive possession and cannot exclude the owner, and therefore this statutory power would certainly not have been needed.

The power is surely put in to make sure that it is never forgotten. In other words it is merely evidence that Parliament thought it important and, considering some of the people being housed at the time of its original enactment, and the strength of the police patrols (if any) in the district it is not surprising that they thought so.

It should be noted how " nicely " (in the proper sense of the word) it all dovetails together if the intention was that the housing authority should grant verbal tenancies. Parliament could have said, but did not, that the tenancy should include a power for the authority to enter, etc. Instead, it actually gave the power, realizing no doubt that it alone of all the powers normally in the written tenancy agreement could not be covered by a byelaw. Is there any other evidence that the then Government envisaged oral and not written tenancy agreements (perhaps for ease of administering the first Housing Acts, because of the numbers likely to be involved)? Surely it is in the very fact that there is no provision for such agreements to be exempt from stamp duty. Agreements for highway dedications and the making and maintaining of highways are duty free, save for a nominal 6*d.* and the repayments of Small Dwellings mortgages are completely duty free.

Let us let the idea of licences alone.

WASTE LANDS OF THE MANOR

By EDWARD S. WALKER, D.P.A. (Lond.)

One of the problems of a local authority (particularly as highway authority) is what to do with those odd pieces of uninclosed land which dot about so many districts, and which no one seems to own.

If the local authority is in a rural area, or what was at one time a rural area, which has a lord of the manor, it is more than likely that these pieces of land, especially roadside waste, are part of the wastelands of the manor.

For a definition of waste land it was said in *Anon* (1549) Benl. 80; 123 E.R. 61, that waste ground means such ground as no man doth challenge as his own, or no man can tell to whom it certainly appertaineth, and lies unclosed and unfenced with hedge or ditch. Heath ground means such ground as is dispersed and lies as common.

Waste land of a manor means and includes any land consisting of waste land of any manor on which the tenants of such manor have rights of common; or any land subject to any rights of common which may be exercised at all times of the year for cattle, levant and couchant; or any land subject to any rights of common which may be exercised at all times of the year and are not limited by number or stints. It need not be proved to be parcel of a manor, but usually is.

Often the lord of the manor has no use for such pieces of waste land, but nevertheless it may be thought desirable by the local authority that they should be controlled, so as to prevent their becoming an eyesore or a nuisance, by being used as a tip for local rubbish or a free car park for local car owners, to give only two examples.

One of the ways in which a local authority may control such waste land is, where the lord of the manor is willing, to take a lease at (usually) a nominal rent.

There does not appear to be any special form for a lease by the lord of a manor of the uninclosed waste lands of the manor. The lord is the owner in fee simple, subject to the rights of the commoners, and, subject to those rights, he can do as he likes.

The question whether the waste lands of the manor will include uninclosed roadside waste is not easily resolved. If a plot of land, formerly part of the waste, lying near a highway is separated from that highway by a strip of

uninclosed waste, then *prima facie* that strip belongs to the freeholder of the enclosed plot: *Doe d. Pring* v. *Pearsey* (1827) 7 B. & C. 304; 108 E.R. 737. The only way the ownership of the freeholder can be rebutted is by the lord's showing that he has in fact performed acts of ownership on the actual strip of land in question. It is not enough to prove acts of ownership on adjoining strips.

Whilst the value of a lease of waste lands from the lord of the manor may in the accepted sense be negligible, it will still be useful for a local authority in controlling such lands in the middle of a town, which are now often remnants of what was once the village common.

The present position as to waste is governed by ss. 193 and 194 of the Law of Property Act, 1925. These sections give the public the right to walk on the waste but not to drive any vehicle or light any fire thereon. Regulations may be prescribed by the lord of the manor (or by the local authority as lessee from the lord) regulating the use of such waste, subject to the approval thereto of the Minister of Agriculture, Fisheries and Food.

It must be remembered that freeholders living within the manor (*i.e.* within the original boundaries of the manor) have rights over the waste, which may sometimes be valued by them, even if irregularly exercised, and these rights would take precedence to any regulations prescribed by either the lord of the manor or his lessee.

In practice it may often be found that the status of alleged waste land is ownership by the adjoining freeholders; it seems then that the police have little power over the land, which is not part of a highway though the public have a right to walk over it on undefined routes. These strips of land have, clearly, only been dedicated as footwalks subject to the right of the owner of the freehold to use the land as he sees fit, so long as he allows reasonable room for foot passengers to walk: and it is unlikely that there is any compulsion on anyone to do or refrain from doing on such strips of land anything which he cannot be made to do or refrain from doing in a garden separated from the highway by a hedge or ditch. Just as he cannot commit an act of indecency in an exposed garden, so he cannot on a strip which is part of the waste of the manor; but, just as he can be drunk or leave a vehicle unlighted in a private garden, so may the person who is in control of the waste do so on that waste.

It is for these reasons amongst others that it is often considered expedient that such waste land of the manor should be acquired or taken on lease by the local authority, so that it may be controlled in a proper manner.

WEEKLY NOTES OF CASES

HOUSE OF LORDS

(Before Lord Reid, Lord Goddard, Lord Tucker, Lord Keith of Avonholm and Lord Birkett.)

DE DEMKO *v.* HOME SECRETARY AND OTHERS

January 19, 22, 1959

Extradition—Discharge of fugitive—Power of Court of Appeal—Original, not appellate, jurisdiction—Fugitive Offenders Act, 1881 (44 *and* 45 *Vict., c.* 59), *s.* 10.

APPEAL from an order of the Court of Appeal, (1958), 122 J.P. 477.

The appellant, on the refusal of a Divisional Court of the Queen's Bench Division to make an order under the Fugitive Offenders Act, 1881, s. 10, discharging him from custody, appealed to the Court of Appeal who dismissed the appeal on the ground that they had no jurisdiction to entertain the appeal. By s. 10, the power to make the order sought is given to a "superior court," which, by s. 39, means, in England, "Her Majesty's Court of Appeal and High Court."

Held: the reference to the Court of Appeal in s. 39 confers on that Court original, but not appellate, jurisdiction, and, therefore, that Court of Appeal rightly decided that it had no jurisdiction to entertain the appeal. *Appeal dismissed.*

Counsel: *Lawton, Q.C.*, and *Merriton*, for the appellant; *The Solicitor-General* (*Sir Harry Hylton-Foster, Q.C.*), *Rodger Winn* and *E. J. P. Cussen*, for the Home Secretary and the governor of Brixton Prison; *J. C. Phipps*, for the High Commissioner for the Union of South Africa.

Solicitors: *Beach & Beach; Director of Public Prosecutions; Jaques & Co.*

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

(Before Lord Morton of Henryton, Lord Tucker, Lord Cohen, Lord Keith of Avonholm and Lord Somervell of Harrow.)

GENERAL NURSING COUNCIL FOR ENGLAND AND WALES v. ST. MARYLEBONE CORPORATION

December 8, 9, 10, 1958, January 28, 1959

Rates—Relief—"Organization concerned with advancement of social welfare"—General Nursing Council for England and Wales—Rating and Valuation (*Miscellaneous Provisions*) *Act,* 1955 (4 *and* 5 *Eliz.* 2, *c.* 9), *s.* 8 (1) (*a*).

APPEAL from an order of the Court of Appeal, (1957), 122 J.P. 67.

The General Nursing Council for England and Wales, originally formed under the repealed Nurses Registration Act, 1919, existed under and for the objects declared in the Nurses Act, 1957. The functions of the council included the maintenance of a register of nurses, together with a roll of assistant nurses; the regulation of the conditions of admission to and removal from the register and the roll, and, in connexion therewith, the exercising of supervisory and directing powers in regard to training and examination; and the exercising of other ancillary powers. The Act of 1957 also provided penalties for the false assumption of the title of registered or enrolled nurse, and imposed restrictions on the use of the titles of nurse or assistant nurse.

Held: the council was not an organization whose main objects were "concerned with the advancement of . . . social welfare" within s. 8 (1) (*a*) of the Act of 1955, because (i) the main object of the council, *viz.*, to regulate the profession of nursing in the manner and to the extent set out in the Nurses Act, 1957, was not charitable: and (ii) (Lord Cohen and Lord Somervell of Harrow dissenting) public benefit was not the test of social welfare, though social welfare might be public benefit, and however wide a meaning was given to "social welfare" or to "the advancement of social welfare," the objects and functions of the council were not concerned with either. *Appeal dismissed.*

Counsel: *Squibb, Q.C.*, and *W. L. Roots*, for the appellant council; *Cross, Q.C.*, and *Blanshard Stamp*, for the respondent rating authority.

Solicitors: *Pontifex, Pitt & Co.; Sharpe, Pritchard & Co.*

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

(Before Viscount Simonds, Lord Morton of Henryton, Lord Reid, Lord Keith of Avonholm and Lord Denning.)

SHELL-MEX AND B.P., LTD. *v.* HOLYOAK (VALUATION OFFICER)

December 11, 15, 1958, January 28, 1959

Rates—Valuation—Plant and machinery—Underground petrol tank of petrol station—Plant and Machinery (*Valuation for Rating*) *Order,* 1927 (*S.R. and O.* 1927 *No.* 480), *sch., class* 4.

APPEAL from an order of the Court of Appeal, (1958), 122 J.P. 229.

At a petrol filling station for motor vehicles there were installed underground four tanks, each of 3,000 gallons capacity, to be used for the storage of petrol. Each tank was constructed of metal and was cylindrical in shape, and was delivered to the site as a complete unit, 13 *ft.* six *ins.* in length and seven *ft.* in diameter, and weighing when empty about two *tons*. Each was installed in a pit measuring internally eight *ft.* six *ins.* by 15 *ft.* by nine *ft.*, the floor of which was covered by a concrete slab, nine *ins.* thick. The walls of the pit were of brick, nine *ins.* thick, and the pit was covered with a concrete slab six and a half *ins.* thick which formed an extension of the forecourt to the filling

station. There was access to the pit by a manhole supported on rolled steel joists. Each tank rested by its own weight on three concrete cradles, 12 *ins.* in height, on the floor of the pit, and the space around the outside of the cylinder and between it and the walls of the pit was filled with sand. A tank could only be removed from its pit by demolishing the concrete covering. The question arose whether the tanks fell to be rated as part of the hereditament which comprised the filling station. It was agreed that each tank formed part of the plant installed at the filling station, and it was admitted that by itself each tank was not a building or structure or in the nature of a building or structure. It was further agreed that each of the pits or compartments was itself a building or structure or in the nature of a building or structure.

Held: (Lord Keith of Avonholm and Lord Denning dissenting): the tanks did not fall to be rated as part of the hereditament because, although the cylinders were "tanks" within class 4 of the schedule to the Plant and Machinery (Valuation for Rating) Order, 1927, they were not themselves, nor were they in the nature of, buildings or structures, and the placing of the cylinders in their compartments did not change them into, or into the nature of, buildings or structures within class 4 as each being part of a unit comprising a pit and the tank within it. *Appeal allowed.*

Counsel: *Widgery, Q.C.*, and *Roots* for the appellants; *Lyell, Q.C.*, and *P. R. E. Browne*, for the respondent.

Solicitors: *Sydney Morse & Co.; Solicitor of Inland Revenue.*

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Stevenson, J.)

CLAXTON *v.* CLAXTON

January 19, 1959

Husband and Wife—Appeal by wife to Divisional Court—Case sent for re-hearing before new panel of magistrates on questions of fact—Right of wife's counsel to read judgment of Divisional Court to Court on re-hearing.

APPEAL from justices.

On April 18, 1957, complaints by the wife against the husband of desertion and wilful neglect to maintain her were dismissed by a court of summary jurisdiction. The wife appealed and on October 17, 1958, the Divisional Court ordered a re-hearing of the case before a fresh panel of magistrates as it considered different inferences of fact should have been drawn from the evidence from those which were drawn by the court below. On December 29, 1958, when the case was before the new panel of magistrates, counsel for the wife attempted to read the Divisional Court judgments, but the magistrates refused to hear what the Divisional Court had said until they had heard the evidence and drawn their own conclusions therefrom.

On an appeal by the wife against this ruling,

Held: (i) there was the widest possible distinction between Divisional Court judgments where magistrates had erred on points of law and where they had drawn wrong inferences of fact, and the magistrates were right in taking the view they did as the case was one of pure fact, and, at a trial *de novo*, it was proper to exclude inferences of fact drawn in the past either by another court of summary jurisdiction or by the Divisional Court; (ii) it was the duty of the clerk of the court, who alone knew the judgments of the Divisional Court on questions of fact, to keep those judgments secret to ensure a fair and proper trial.

Counsel: *Mrs. E. K. Lane*, for the wife; *J. S. Taylor*, for the husband.

Solicitors: *Kingsford, Dorman & Co.*, for *Gosschalk, Austin & Wheldon*, Hull; *Thompson, Cook & Babington*, Hull.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

TRUST FUND FOR FORMER JAPANESE PRISONERS-OF-WAR AND CIVILIAN INTERNEES

A trust fund is to be set up from the balance of the assets under Articles 14 and 16 of the Peace Treaty with Japan to give help to former Japanese prisoners-of-war, civilian internees and their dependent relatives. The balance is likely to amount to rather more than £200,000 in all, from which a grant of £25,000 will also be made to the Central Welfare Fund of the Federation of Far Eastern Prisoners of War Clubs and Associations.

The new trust fund will help in such ways as the provision of accommodation for the aged, sick or convalescent in homes or otherwise; assistance towards education, training or re-settlement, house purchase or improvement, and towards holidays for the disabled, convalescent or sick.

The transfer of the remaining money to the new trust will mean that it will not be possible to entertain any belated applications for a *per capita* share of the assets after March 31, 1959.

INQUIRY INTO THE NEED TO CONTROL ABSTRACTIONS OF SURFACE WATER

The sub-committee set up by the Central Advisory Water Committee to inquire into the growing demand for water, whose first report has just been published, has been asked to undertake a further inquiry into the extent of uncontrolled abstractions of surface water and the possible need for controlling such abstractions.

Any organization or person wishing to give evidence to the sub-committee should send a memorandum to the Secretary, Central Advisory Water Committee, at the Ministry of Housing and Local Government, Whitehall, S.W.1.

The sub-committee has the following terms of reference:

"In connexion with their investigations into the extent to which demands for water are increasing and the problems involved in meeting those demands, to inquire into the extent of uncontrolled abstractions of surface water for agriculture, especially irrigation, for industry and for other purposes, and into the effect of such abstractions on the quantity and quality of surface water available for all purposes; to consider whether powers are needed to control such abstractions in general or in particular; and to make recommendations."

Persons and organizations who intend to submit evidence are asked to notify the secretary as soon as possible of the date by which their memoranda will be ready.

AWARD OF SWINEY PRIZE

The Swiney Prize for the best published work on medical jurisprudence has been awarded to Dr. Keith Simpson for his book *Forensic Medicine*, 3rd edn.

The prize consists of £100 in cash and a silver cup of the same value. It is awarded on every fifth anniversary of the testator's death for the best published work alternatively on medical and general jurisprudence. There were 14 entries for the prize and the award was made by the joint committee of the Royal Society of Arts and the Royal College of Physicians.

ROAD CASUALTIES: FIGURES FOR DECEMBER AND THE YEAR 1958

Road casualty figures for December show that 696 persons were killed and 7,080 seriously injured. The slightly injured numbered 21,191, making a total for all casualties of 28,967. This was 3,452 or 13½ *per cent.* more than in December, 1957. The Road Research Laboratory estimate that during the same period traffic on main roads increased by 15 *per cent.*

Further details can now be given of the casualties on the roads of Great Britain in 1958, which, as announced in the House of Commons, totalled 299,767, including 5,970 deaths.

The figures for the main groups of road users were:—

	Killed	Total (Killed or injured)	Increase or Decrease
Pedestrians	2,408	63,227	+ 3,431
Pedal Cyclists	668	51,696	+ 1,951
Drivers of Motor Cycles and their passengers ...	1,379	74,383	+ 5,750
Drivers of other vehicles and their passengers ...	1,515	110,461	+ 14,777
Totals	5,970	299,767	+ 25,909

An increase of nearly 24 *per cent.* in the casualties to drivers of vehicles other than motor-cycles was the main feature of the 1958 figures. The number of drivers killed, 686, was 157 more than in 1957, while the total of killed and injured rose by 7,884 to 41,137.

This sharp increase in casualties to drivers coincided with an increase of 477,000 in the number of motor vehicles on the road.

The increase is also partly accounted for by the fact that during the early part of 1957 petrol rationing was still in force and the number of motoring casualties was below the normal level.

During 1958, 717 children were killed in road accidents, the same number as in 1956, but 88 more than in 1957. The number killed and injured was 49,863, an increase of 4,533 compared with 1957.

The total for all casualties shows an increase over 1957 of 9½ *per cent.* This compares with an increase in traffic on main roads in 1958, as estimated by the Road Research Laboratory, of 16 *per cent.*

THE WEEK IN PARLIAMENT

By J. W. Murray, Our Lobby Correspondent

ROAD TRAFFIC OFFENCES

At question time in the Commons, Mr. R. G. Page (Crosby) asked the Secretary of State for the Home Department (i) if he would publish a statement listing, to a convenient recent date, the number of convictions and, in relation to the maximum fine permitted, the average fine for a first offence, the average fine for a subsequent offence, and the number of disqualifications imposed, since the coming into operation of the Road Traffic Act, 1956, in the convictions for neglect of regulations governing pedestrian crossings, and failing to report or stop after an accident, respectively; (ii) if he would publish a statement listing, to a convenient recent date, the number of convictions, and, in relation to the maximum fine permitted, the average fine for a first offence, the average fine for a subsequent offence, and the number of disqualifications imposed, since the coming into operation of the Road Traffic Act, 1956, in the convictions for driving under the influence of drink or a drug, and being in charge of a vehicle while under the influence of drink or a drug, respectively; and (iii) if he would publish a statement listing, to a convenient recent date, the number of convictions, and, in relation to the maximum fine permitted, the average fine for a first offence, the average fine for a subsequent offence, and the number of disqualifications imposed, since the coming into operation of the Road Traffic Act, 1956, in the convictions for exceeding the speed limit in a built-up area, exceeding the speed limit for a goods vehicle, reckless or dangerous driving, and careless driving, respectively.

The Secretary of State for the Home Department, Mr. R. A. Butler, replied that the relevant provisions of the Road Traffic Act, 1956, had come into force on November 1, 1956, and there were no separate figures for the months of November and December of that year. The following figures, which were the latest available, related to prosecutions in magistrates' courts in England and Wales in 1957. He regretted that it was not possible to give separate figures for average fines imposed for conviction for a first offence and for subsequent offences.

Offence	Number of Convictions	Average Fine	Maximum Fine for First Offence	Maximum Fine for Subsequent Offence	Number of Disqualifications
		£ s. d.	£	£	
Neglect of Regulations governing pedestrian crossings	15,069	1 12 11	10	25	13
Failing to stop after or to report an accident	7,090	2 15 8	20	50	7
Driving under the influence of drink or drug	3,035	22 4 7	100	100	2,883
In charge of vehicle when under the influence of drink or drug	660	17 11 0	50	100	348
Exceeding speed limit in a built-up area ..	77,414	2 15 8	20	50	254
Exceeding speed limit for goods vehicle ..	34,759	2 18 1	20	50	122
Reckless or dangerous driving	4,899	14 3 10	100	100	1,994
Careless driving ..	38,731	5 11 2	40	80	1,718

LANDLORD AND TENANT ACTIONS

Mr. J. A. Sparks (Acton) asked the Attorney-General how many actions for possession of premises to which the Landlord and Tenant (Temporary Provisions) Act, 1958, applied had been entered in county courts in the Metropolitan police area; how the actions had been disposed of; and how many of them had been entered in the Brentford county court.

The Attorney-General replied that the number of such actions entered in courts situated in the Metropolitan police area by January 1, 1959, was 1,871, but the districts of the courts did not entirely coincide with the boundaries of the Metropolitan police area. Of the actions entered 93 had been withdrawn, 1,225 were still pending and 499 had been heard. In 362 of the cases which had been heard the tenant applied for the order for possession to be suspended. Suspension was granted in 286 cases and refused in 76. Thirty-seven of the orders refusing a suspension were made by consent of the parties.

In the Brentford county court 155 actions were entered and 118 were still pending on January 1. In 28 of the 37 cases heard the tenant applied for a suspension. Suspension was granted in 24 cases.

PERSONALIA

APOINTMENTS

Mr. Bazil Sylvester Wingate-Saul, recorder of Oldham since 1950, has been appointed a Judge at Croydon county court in succession to Judge Malcolm Wright, Q.C. Mr. Wingate-Saul was educated at Rugby and St. John's College, Oxford, and was called to the bar in 1928.

Mr. B. J. B. Ezard, C.B.E., assistant solicitor, Ministry of Labour and National Service, has been appointed solicitor to the Ministry in succession to Sir Archibald Harrison, C.B.E., who is retiring on March 13, next. Sir Archibald has been solicitor for the last 10 years.

Mr. H. H. Thomas has been appointed clerk and chief financial officer to St. Neots, Hunts., urban district council. He succeeds Mr. L. Henderson, who is taking up appointment as clerk to Berkhamsted, Herts, rural district council. Mr. Thomas will take over at St. Neots not later than May 1, next. Since April, 1957, Mr. Thomas has been town clerk and borough accountant of Brackley, Northants. Previously he was with Bishop's Castle borough council, Shropshire, for just over two years and before and immediately after the war, with Salop county council as assistant to the senior accountant.

Mr. Alan E. Ellis, senior legal and administrative officer, has been appointed solicitor to the Crawley development corporation on the resignation of Mr. P. K. S. Wilkinson, who has entered practice in London.

OBITUARY

Miss Mary Size, deputy governor of Holloway prison from 1928 to 1941, and later governor of Aylesbury and Askham Grange prisons, has died at the age of 76.

SHORTER NOTICES

The Annual Charities Register and Digest. Sixty-sixth Edition. London: Butterworth & Co. (Publishers) Ltd. Price 17s. 6d. net.

The Register is published annually, under the auspices of the Family Welfare Association. It lists, under separate section headings such as physically handicapped; mentally handicapped, etc., the various charitable organizations. It also gives the income of each charity, and various other items of information. It should prove of assistance to probation officers and their social workers as showing, in classified sections, the types of charity; also to solicitors called upon to give advice on bequests.

Pears Cyclopaedia. Sixty-seventh Edition. Edited by L. Mary Barker, B.Sc., assisted by 10 specialist associate editors. Isleworth: A. & F. Pears, Ltd. Price 17s. 6d.

It is many years since we last saw a copy of *Pears Cyclopaedia*, and if the current edition is any guide, this has been our loss. The Cyclopaedia consists of some 992 pages, plus an atlas of 32 pages in full colour. The contents include a section of 26 pages on the law of England—the first 23 pages of which were written by one of our regular contributors and altogether range over an extraordinarily wide field. In addition to the more usual type of entry which is the lifeblood of compendiums such as this, is to be found such unexpected "bonus" sections as that on Greek mythology retold in the light of modern research, extending to 38 pages. Altogether a fascinating volume.

NOTICES

A lecture on Civil Liberties in the United Kingdom and Colonies, by Neil Lawson, Q.C., LL.M., at the London School of Economics and Political Science, Houghton Street, Aldwych, W.C.2, will be given at 5 *p.m.* on Tuesday, February 24, 1959. The chair will be taken by Professor Sir David Hughes Parry, Q.C., M.A., LL.D., D.C.L., Professor of English Law in the University of London. The lecture is addressed to students of the London University and to others interested in the subject. Admission is free, without ticket.

GIVING TONGUE

How, when and why, in the history of mankind, the cries, grunts, squeaks, growls and roars of its animal forbears began to develop into a means of intelligible communication is unknown. The question whether other animals have something that can rightly be compared with language is a doubtful one; but anthropologists tells us that, in its developed form, language is a distinctively human characteristic, not lacking even among most primitive and backward peoples. Biologists distinguish between "eye-language"—motions and gestures—and "ear-language," that is, ordinary speech. The paramount importance of the latter is that the speech-organs are capable of producing a large variety of sounds, distinguishable both in light and in darkness, without impairing the simultaneous activity of the hands, arms, facial muscles and other bodily parts; for this reason speech, with or without the accompaniment of gestures, has come to be the normal means of making mental contact between one human being and another. And, apart from this purposive activity, language often serves as an outlet for intense feeling; we all know the type of person who enjoys talking for talking's sake, without having anything in particular to communicate to his fellows. Poetry and song are special examples of this function of vocal exercise. All in all, then, speech and language are among the most potent forces in social life.

There are, of course, pronouncements to the contrary effect. "Speech is silvern; silence is golden" writes Thomas Carlyle, quoting from the original German; and, in another passage, "Speech is human; silence is divine." These comparisons have, at any rate, done nothing to impair his own considerable volubility; among all writers of English he comes nearest to making a travesty of those lines which Dante applies to Vergil:

Quella fonte
Che spande di parlar si largo fiume—

"that fount which poured forth so broad a stream of speech." If ever an author used 20 words where two would suffice, that author is Carlyle. But, for the most part, the writers, and especially the poets, have other views. William Cowper's lonely Alexander Selkirk regrets the "sweet music of speech." "Language," wrote Emerson, "is fossil poetry." Samuel Johnson tells us:

"Language is the dress of thought." For Shelley—
"Language is a perpetual Orphic song
Which rules with Daedal harmony a throng
Of thoughts and forms, which else senseless and shapeless were."

Another fascinating thing about language is its variety among the races of mankind. Few people nowadays accept the literal accuracy of the narrative, in the eleventh chapter of *Genesis*, about the confusion of tongues that interrupted the building of the Tower of Babel. It is difficult to believe that, at any period, "the whole earth was of one language, and of one speech"; climatic and other local variations are certain to have affected the act of communication, within the different races of humanity, at a very early age—if for no other reason, because speech is essentially an imitation art. Nobody learns his own native language scientifically, but deductive methods; those methods are reserved for the study of foreign tongues, except for the fortunate few who are bilingual almost from birth, because their parents are natives of two different lands.

Linguistic study seldom has the appeal that Caliban found it to contain:

"You taught me language, and my profit on it
Is—I know how to curse. The red plague rid you
For learning me your language!"

This, though scientifically unsound, is an original idea. It is interesting matter for the philologist to discover why some languages are peculiarly rich in expletives—especially words commencing with the explosive sounds b—, d—, f—, and p—, while others specialize in lengthy phrases of picturesque abuse. It is possibly the Arabic literary tradition that leads the chief of police, in Flecker's *Hassan*, to address the poet Ishak in the words "You bastard son of a quill-bearing barn-fowl!" and Ishak to retort—"Thou beastly, blood-drinking brute and bloated bully, take off thy stable-reeking hands!" Alliteration is a poetic device, and makes such an address the more effective.

The recent case of *Nicholson* v. *Glasspool* (*The Times*, February 2), in the Divisional Court, indicates that there may be some variety in the judicial approach to the subject. The defendant appealed, by way of Case Stated, against his conviction, by the justices of the West Riding of Yorkshire, sitting at Otley, for using obscene language in a street "to the annoyance of a person therein" (contrary to one of the local byelaws for good rule and government). Before the justices, evidence had been given of the defendant's use of obscene language in a busy street; but in the first instance no evidence had been offered by the prosecution that any person was annoyed thereby. The defence thereupon submitted that there was no case to answer, upon which the justices permitted the recall of the constable who had brought the charge, and he said in evidence that he had been "very annoyed."

Before the Divisional Court counsel for the defence submitted that "obscene language was different in kind from ordinary noise," and that it was not right to infer, without express evidence, that such language caused annoyance. (He disclaimed all intention of alleging any special peculiarity of Yorkshiremen in their attitude to this matter.) The Lord Chief Justice pointed out that the judgment of the Court in *Raymond* v. *Cook* [1958] 3 All E.R. 407, in which it was held that a musical instrument on an ice-cream vendor's cart was capable of being a *noisy* instrument (a point to which we referred, in this column, *ante*, p. 62), had not been drawn to the justices' attention. It was contended, said his Lordship, that there was "a difference between language and other noises"; but he could see "absolutely no difference" between the two. The language was not used in a whisper; by its nature it was calculated to annoy, and the justices were entitled to infer annoyance. In *Raymond's* case the defence failed to show the legal relevance of a distinction between music and noise; in *Nicholson's* case there was a gallant but futile attempt to distinguish, in the context of annoyance, between language and other noises. It looks as if the animals, who grunt and growl according to their nature, have the best of the bargain after all.

A.L.P.

NOW TURN TO PAGE 1

The attainment of the age of 17 years by a probationer, or a person in whose case an order for conditional discharge has been made, shall not deprive a juvenile court of jurisdiction to enforce his attendance and deal with him in respect of any failure to comply with the requirements of the probation order or the commission of a further offence or to amend or discharge the probation order. (Children and Young Persons Act, 1933, s. 48 as amended by the Criminal Justice Act, 1948, sch. 9.)

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons—*Fit person order to local authority—Probation order already in force.*

A juvenile, aged 11 years, is brought before the juvenile court on a charge of larceny and is placed on probation for three years. Six months later he is again brought before the juvenile court charged with larceny and malicious damage and is committed to the care of the local authority under a fit person order.

He is now in one of the local authority homes and making excellent progress. The probation order was not discharged and the probation officers still appear to be exercising some authority and are making reports from time to time to the probation case committee.

It appears to me to be contrary to the intention of the legislature that a probation order should be current at the same time as a fit person order. *See* in particular s. 84 (6) of the Children and Young Persons Act, 1933, which makes provision for placing a child on probation on the termination of a fit person order and in substitution of that order.

If you agree, I suggest that the probation case committee should now instruct the probation officer concerned to apply to the juvenile court to discharge the existing probation order.

RALIN.

Answer.

By s. 5 of the Children Act, 1948, the consent of a local authority is not required for the making of a fit person order unless a probation order is in force.

In this case it would appear that as a probation order was in force at the time the fit person order was made, the consent of the local authority was given to the making of the latter order.

We are not aware of any statutory provision that a probation order should not be in force at the same time as a fit person order.

Section 84 (6) of the Children and Young Person Act, 1933, provides for the making of a supervision order (not a probation order).

2.—Elections—*Returning officer co-opted to parish council—Position at next election.*

With reference to P.P. 2 at 122 J.P.N. 863, it seems to me that your questioner, for the possible reasons he has expounded, would be unable to act as returning officer for that particular parish council election, but the chairman of the rural district council could appoint another person as returning officer—presumably the deputy clerk, if there is one, or some other senior official of the council: *see* para. 1 (1) of the Parish Council Election Rules, 1952, S.I. 1952, No. 91. In view of the proviso to the said paragraph, this remedy for the situation would involve the sacrifice of the post of returning officer for the rural district council election for that parish as well. This is covered by para. 1 (1) of the Rural District Council Election Rules, 1951, S.I. 1951, No. 169.

BACKLE.

Answer.

We agree: the query illustrates the "embarrassment" we had in mind last year, when suggesting that it might be wise to avoid such a situation.

3.—Food and Drugs—*Food Hygiene Regulations*, 1955—*No wash-hand basin fitted—Additional offence of no water supply to non-existent basin?*

I should much appreciate it if you would kindly refer to regs. 16, 32 and 33 of the Food Hygiene Regulations, 1955, and give me your opinion on the questions set out below. Incidentally, in putting this problem before you, I am respectfully criticizing your answer to P.P. 5 at 122 J.P.N. 226.

The clerk of a local authority recently applied for process against the occupier of certain food premises on two informations alleging:

1. Failure to provide and maintain a wash-hand basin as required by reg. 16 (1);

2. Failure to provide and maintain a supply of water as required by reg. 16 (2).

Briefly, the facts were that no wash-hand basin at all was provided and maintained at the premises, and, *a fortiori*, no supply of water was provided and maintained to a wash-hand basin.

My view was that, while it would be quite proper to charge a failure to provide and maintain the wash-hand basin, no court could convict, in these circumstances, on the other information. My reason was that if no wash-hand basin exists, then it is impossible to provide and maintain for it a supply of water, and the law does not require the impossible to be done.

The prosecution accepted this view, albeit reluctantly, and decided not to lay the information in respect of the water supply. Our minds, however, are not free from doubt, having regard partly to your answer at 122 J.P.N. 226 by which you appear to imply that because a requirement is absolute it must be complied with notwithstanding the impossibility of such compliance.

I should be grateful for your answers to the following questions:

1. Do you still adhere to your view expressed at 122 J.P.N. 226?

2. If so, can you distinguish the case there dealt with from the present one? In other words, was your answer conditioned by the fact that a braking system *existed* but was not properly adjusted? If the braking system had been as non-existent as the wash-hand basin would your answer have been the same?

3. If you think that impossibility of compliance is no defence, how would you draft the information to conform to reg. 16 (2) in these circumstances, bearing in mind that you would have to use words which would give effect to "such wash-hand basin"?

4. In reg. 32, the words "structure," fixtures," and "equipment" are used in creating offences. Would you kindly say under which of these heads you think a supply of water should be classified?

KALFOR.

Answer.

1. Yes.

2 and 3. We agree that if the vehicle had *no* brake as required by reg. 10 of the Construction and Use Regulations it could not be said to be fitted with a brake capable of being set. There would be an offence against s. 3 of the Road Traffic Act, 1930, but no offence under reg. 91 of the regulations. If there is a brake the fact that it needs adjustment before it can effectively be set does not prevent it from being a brake capable of being set.

We agree that the words in reg. 16 (2) of the Food Hygiene Regulations "every *such* wash-hand basin" have no meaning when there is no such basin.

4. In the Concise Oxford Dictionary "equip" is defined as "furnish with requisites." The water is a requisite with which a hand basin must be "equipped" and we think, therefore, that the water supply comes under the heading of "equipment."

4.—Husband and Wife—*Maintenance Orders (Facilities for Enforcement) Act*, 1920—*Provisional order for maintenance of wife and children—Husband's successful defence of wife's adultery—Can that part of order referring to the children be confirmed?*

An order was made in Jamaica by the resident magistrate at Saint Andrew under the Maintenance Orders (Facilities for Enforcement) Act, 1920, for the payment of £2 per week for the complainant and 30*s.* per week for the maintenance of each of four children of the marriage. The defendant in the case (a Jamaican) who resides within my division was summoned to appear before the justices when he alleged that the complainant had committed adultery, which he had not condoned. A deposition was taken from him, and the papers sent back to Jamaica.

The complainant then made a deposition before the resident magistrate admitting that she had committed adultery, and ends her deposition by stating—"I am not now seeking that my husband be ordered to maintain me but that he be ordered to maintain the four children of the marriage which said children live with me."

The matter was again considered by my justices and counsel for the defendant husband has submitted that since such an admission by the wife would be a complete bar to the making of an order under the Summary Jurisdiction (Separation and Maintenance) Acts, the provisional order made in Jamaica should not be confirmed by my justices.

I should be grateful for your advice on this matter having regard to s. 4 of the Act. This section states "If at the hearing

. . . the court may confirm the order either without modification *or with such modifications as to the court after hearing the evidence may seem just.*"

Counsel for the husband argued that the words underlined relate to the amount of maintenance a husband should be ordered to pay and cannot be construed as allowing the court to confirm only that part of the order which relates to the maintenance of the children. G. JEL.

Answer.

While we would not agree that the words "or with such modifications as to the court after hearing the evidence may seem just" in s. 4 (4) of the Act necessarily apply only to the amount of the order, in this case we think the proper course is for the court to refuse to confirm the order. The order appears to be a composite one, giving maintenance to the wife and also making provision for the children, and we do not think that that part of the order relating to the children is severable. It is still open to the wife to apply for orders in respect of the children only, unless the local law of Jamaica contains anything to the contrary.

5.—Landlord and Tenant—*Certificate of disrepair in respect of dwelling-house subject to demolition order.*

Some months after a notice of increase of rent in respect of a particular house becomes operative, a demolition order is made on the house in question. It appears that the notice of increase was valid and the tenant has continued to pay the increase demanded, which is within the statutory limit. Subsequently the tenant served form G on the landlord and has now applied to the council for a certificate of disrepair. Should the local authority issue a certificate ? ACASTRA.

Answer.

In P.P. 4 at 122 J.P.N. 309 we said that a certificate of disrepair could properly be granted when a house was subject to a clearance order, because there might be delay before the house was pulled down; indeed it might not in the end be pulled down. We reserved our opinion about a house subject to a closing order or demolition order. In the case now before us, we are not told whether the demolition order has become operative. If it has not, because an appeal has been lodged under s. 20 of the Housing Act, 1957, and not yet heard, we think a certificate of disrepair can be issued, so as to protect the tenant while he remains, pending demolition. If the demolition order has already become operative by virtue of s. 37 of the Housing Act, 1957, a certificate of disrepair is pointless, because the council must demolish the house.

6.—Licensing—*Whether forecourt immediately outside front door is part of the licensed premises.*

I am interested in your reply to the question whether a hotel *car park* is part of licensed premises dealt with in P.P. 6 at 123 J.P.N. 13, as I am confronted with a similar question. In my case the licensee proposes to place small tables and chairs on his small forecourt immediately outside his front door and to accept orders from these tables and to supply intoxicating liquor to them. Would you say that the immediate forecourt is not part of the licensed premises for the purposes of part VII of the Licensing Act, 1953 ?

I know of no case of direct bearing but the case of *Simons* v. *Winslade* [1938] 3 All E.R. 774 may be of passing interest. This was an action in tort where a customer slipped on vomit when crossing a yard at the back of licensed premises to a convenience. Counsel (during argument) said the licensed premises ended at the door and this yard was not part of the licensed premises at all. Greer, L.J. (giving judgment), said "The place where the man was injured *was* part of the licensed premises." NESTOR.

Answer.

We do not think that *Simons* v. *Winslade, supra,* offers much guidance on this point. This case dealt with the extent of licensed premises by reference to the duty owed by the proprietor to an invitee.

We hesitate to advise that the forecourt of licensed premises is part of the premises for the purpose of s. 120 (1) of the Licensing Act, 1953; but it is not unlawful or unusual for intoxicating liquor, sold in licensed premises, to be consumed by people who sit, either at tables or not, in gardens, forecourts, and similar places in proximity to on-licensed premises. The important matter is that the liquor must have been appropriated to the contract of sale in the licensed premises: *see Pletts* v. *Beattie* (1896) 60 J.P. 185, and other cases noted in *Paterson* to s. 120 of the Licensing Act, 1953.

7.—Licensing—*Term licence—Beer on-licence—Restricted class of customers—Public works canteen.*

An application is being made on behalf of public works contractors for a licence for a canteen. It is not practicable to rely on a club licence because the employees who are members are continually changing.

Could the following restrictions be applied:

1. The licence to be limited for a number of years (Licensing Act, 1953, s. 6).

2. Licence to be restricted to the sale of beer and not to include spirits.

3. Only employees of the contractors to be served, *i.e.*, the general public to be excluded. OBOR.

Answer.

The licence may be granted as a beer (or beer and wine) on-licence for any term, other than 12 months, not exceeding seven years (Licensing Act, 1953, s. 6 (4)). A condition may be attached to the licence placing restrictions on the class of customers to whom intoxicating liquor may be sold in the licensed premises (s. 6 (2)).

8.—Local Government Act, 1933, s. 76—*Club membership by councillor.*

With reference to P.P. 5 at p. 32, *ante,* would not the members in question be saved by proviso (ii) to subs. (2) (*b*) ? DIDOR.

Answer.

The present query underlines what we said in our previous answer, about its generality. The crucial word in proviso (ii), *supra,* is "only," and on the face of the former query, which indicated that in some cases their subscription might be increased or reduced in consequence of the council's decisions, we think the councillors (or some of them) had an interest beyond that of mere membership.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*).

WEST RIDING OF YORKSHIRE

Appointment of County Chief Constable

THE Standing Joint Committee of the West Riding of Yorkshire invite applications for the post of Chief Constable of the County.

Applicants must possess police experience, and a full knowledge of the duties of the office of chief officer of police or such other qualifications of an exceptional character as to fit them for the post.

The pay on appointment will be £3,370 per annum. A house will be provided and a uniform allowance of £45 per annum will be paid.

The officer appointed must devote his whole time to the duties of the office as laid down by the Police Acts and Regulations, and will not hold any other appointment or engage in other work.

The appointment will be subject to the approval of the Secretary of State and will be determinable on three months' notice in writing on either side.

Particulars and Conditions relating to the appointment are obtainable from the Clerk to the West Riding Standing Joint Committee at the County Hall, Wakefield, and completed applications must be received by him not later than March 16, 1959.

Canvassing, directly or indirectly, will be a disqualification.

BERNARD KENYON,
Clerk to the West Riding
Standing Joint Committee.

BOROUGH OF MORLEY

Town Clerk's Department

Appointment of Committee and General Clerk

APPLICATIONS are invited for the above permanent appointment at a salary in accordance with Grade A.P.T. I (£575—£725).

Applicants should have experience in the office of a local authority and possess a knowledge of committee procedure.

Consideration will be given to the provision of housing accommodation if necessary.

Applications, stating age, present appointment, and experience, together with copies of two recent testimonials, must be received by the undersigned not later than February 27, 1959.

E. V. FINNIGAN,
Town Clerk.

Town Hall,
Morley.

FLINTSHIRE MAGISTRATES' COURTS COMMITTEE

APPLICATIONS are invited from solicitors qualified in accordance with the Justices of the Peace Act, 1949, for the part-time appointment of Clerk to the Justices for the petty sessional divisions of Prestatyn and Rhuddlan. Personal salary £1,020 per annum rising by four yearly increments of £60 to £1,260.

Application forms and Conditions of Service from the Clerk to the Magistrates' Courts Committee, County Buildings, Mold. Closing date March 10, 1959. Canvassing disqualifies.

IN THE ROYAL BOROUGH OF KINGSTON-UPON-THAMES

APPLICATIONS are invited for the appointment of a whole-time assistant in the office of the Clerk to the Justices at Kingston-upon-Thames. Applicants should have a general knowledge of the work of a Justices' Clerk's office and be competent typists.

The appointment will be in the General Division, Grade I, and will be subject to the conditions of service of the Joint Negotiating Committee for Justices' Clerks' Assistants. The post is superannuable and subject to medical examination. Salary according to age and experience.

Applications, stating age, qualifications and experience, together with copies of three testimonials, should be sent to the undersigned not later than March 7.

JOAN ADAIR,
Clerk to the Justices.

Guildhall,
Kingston-upon-Thames.

CITY OF MANCHESTER

Appointment of Additional Whole-time Male Probation Officer

APPLICATIONS are invited for the above appointment.

Applicants must not be less than 23 nor more than 40 years of age, except in the case of a serving probation officer.

The appointment and salary will be in accordance with the Probation Rules, 1949 to 1958.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of not more than two recent testimonials, must reach the undersigned not later than March 2, 1959.

HAROLD COOPER,
Secretary of the
Probation Committee.

City Magistrates' Court,
Manchester, 1.

SHROPSHIRE COMBINED PROBATION AREA

Appointment of Additional Whole-time Male and Female Probation Officers

APPLICATIONS are invited for the appointment of an additional whole-time male Probation Officer and also a whole-time female Probation Officer for the above probation area.

The appointments and salaries will be in accordance with the Probation Rules and the successful candidates will be required to pass a medical examination. Candidates must not be less than 23 or more than 40 years of age, except in the case of a serving officer.

Applications should reach me not later than March 14, 1959, and should state date of birth, present position, previous employment, qualifications and experience, together with the names and addresses of two referees.

G. C. GODBER,
Secretary of the County
Probation Committee.

Shirehall,
Shrewsbury.

THE RURAL DISTRICT COUNCILS ASSOCIATION

APPLICATIONS are invited for the post of Secretary of the above Association which will become vacant on November 1, 1959.

The salary will be £3,000 per annum and applicants must be barristers or solicitors with a considerable knowledge and practical experience of local government law and administration.

The appointment will be subject to the Local Government Superannuation Act, a satisfactory medical examination and to three months' notice in writing on either side.

Applications, stating age, qualifications and previous and present appointments, together with the names and addresses of two referees, should reach the undersigned not later than Tuesday, March 10, 1959.

JOHN J. McINTYRE,
Secretary.

191–7 St. Stephen's House,
Victoria Embankment,
Westminster, London, S.W.1.

ESSEX PROBATION AREA

Appointment of Probation Officer

APPLICATIONS are invited for the appointment of a full-time female Probation Officer.

Applicants must be not less than 23 nor more than 40 years of age, except in the case of a serving probation officer.

The appointment will be subject to the Probation Rules, 1949 to 1958, and the salary will be according to the scale prescribed by those rules.

Applicants should be able to drive a car.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with the names of two referees, must reach the undersigned not later than 14 days after the appearance of this advertisement.

W. J. PIPER,
Clerk of the Peace and of the
Probation Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.

CITY OF LEICESTER

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the above appointment.

Applicants must not be less than 23 years nor more than 40 years of age.

The appointment will be subject to the Probation Rules, 1949, and the salary will be in accordance with the prescribed scale. The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of three recent testimonials, should be addressed to me, the undersigned, so as to reach me not later than Saturday, March 14, 1959.

CHARLES W. COLLINS,
Acting Secretary to the
Probation Committee.

Town Hall,
Leicester.